IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Second Appeal No.590 of 2003

Sou. Vasanti Chandrakant Bhujbal — Appellant
Vs.
The Municipal Corporation of the City of Pune and anr. — Respondents

Ms.Anita A. Agarwal for appellant.
Mr.V.G.Mujumdar for resp.no.1.

CORAM: B.H.MARLAPALLE, J.
June 21, 2007.

P.C.

1. Heard Ms.Agarwal, the learned counsel for the appellant - original plaintiff in Regular Civil Suit No.2076 of 1987. In the said suit the plaintiff had challenged the notice issued by the Defendant - Corporation calling upon her to shift her stall from the present location near Plot No.1077/A, Shivajinagar, (near Laxmi Housing Society), near Bank of Baroda / Sahara Hotel, off Senapati Bapat Road, Pune. The Corporation in its Written Statement contended as under:

(a) that the plaintiff was only a licence holder and she did not have vested right to continue her stall at a specific location;

(b) the stall was located at the place where there

was traffic congestion, and

(c) the residents had complained and on receiving such complaints the site was visited by an officer who submitted a report recommending to shift the stall.

The Corporation further pointed out that there were in all seven stalls and all of them were given notices. The learned Judge of the trial Court agreed with the Corporation that the plaintiff did not have a vested right to continue as a stall holder at the old site, but he held that the permission once granted cannot be cancelled. On the point of maintainability of the suit without giving notice to the Corporation under Section 487 of the Bombay Provincial Municipal Corporations Act, 1949, the trial Court answered against the Corporation and thus the suit was decreed.

2. In Civil Appeal No.6 of 1992 filed by the Corporation the learned Judge of the lower Appellate Court took into consideration the findings recorded by the trial Court that the plaintiff did not have vested right to run her business at a particular site

and the licence could be revoked by the Additional Commissioner. As per the lower Appellate Court the Corporation has the right to shift the place of stall or to revoke the licence if the circumstances so warranted. It relied upon the report of the Officer and the depositions of the Corporation's witness and held that the trial Court was wrong in granting the decree in favour of the plaintiff once it was held that the plaintiff had no vested right to have the stall in a particular place or to say that the licence could not be revoked. It examined the scheme of Sections 230 and 284 of the BPMC Act and held that the licence granted was revocable, if there was any breach of the conditions on which it was granted.

3. The licence for the suit stall was granted to the plaintiff in the year 1985, though the nature of business was not stated therein. In the plaint the plaintiff has stated that she is carrying out the business of bakery and stationery. It is also clear from the judgments of both the Courts below that the Corporation had offered the plaintiff to shift to on alternative location but the same was not acceptable to her. She was rather apprehensive that the location address was not given and it may not be

conducive for the business she was engaged in.

4. During the course of this Second Appeal, Mr.Mujumdar, the learned counsel for the Corporation reiterated, on instructions, that the Corporation was willing to shift the stall to a nearby location even now and, therefore, he was called upon to file an affidavit giving the exact location of the proposed new place. Shri Dnyandeo Thube, the Deputy Municipal Commissioner (Special) of the Corporation has filed an affidavit and has stated that the plaintiff could be allowed to shift her stall near Buddha Vihar, off Vishrambaug Housing Society, Shivajinagar, Pune. Along with the affidavit a sketch of the present and new location was shown to me and I am satisfied that the new place is in the same locality.

5. The view taken by the lower Appellate Court is based on the provisions of sections 230 and 284 of the BPMC Act as well as the findings recorded by the trial Court that the plaintiff did not have vested right to continue her stall at a fixed location and that the licence could be revoked for good reasons i.e. if the licence holder acts in breach of the conditions of the licence. The proposal made by the

Corporation to shift the plaintiff's stall was also reasonable and the proposal now made appears to be so. While I am satisfied that no substantial question of law arises for consideration in this Second Appeal, the Corporation is required to take due steps to ensure that the plaintiff is accommodated at the new location as stated in the affidavit presented today.

6. Hence the appeal is dismissed and it is directed that the plaintiff will shift her stall to Buddha Vihar, off Vishrambaug Housing Society (Senapati Bapat Road), Shivajinagar, Pune, as early as possible and in any case within a period of four weeks from today. It is directed that the Corporation shall allot the new place within one week from today and the Corporation shall permit the plaintiff to carry out her business from the new location even while her application for renewal of the licence would be pending.

(B.H.MARL